

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., )

Plaintiff, )

v. )

BAXTER INTERNATIONAL INC., and )  
BAXTER HEALTHCARE CORPORATION, )

Defendants. )

BAXTER HEALTHCARE CORPORATION )

Counterclaimant, )

v. )

TALECRIS BIOTHERAPEUTICS, INC., and )  
BAYER HEALTHCARE LLC., )

Counterdefendants. )

C.A. No. 05-349-GMS

Jury Trial Demanded

NOTICE OF SERVICE OF SUBPOENA

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 45, a subpoena, attached hereto as Exhibit 1, was being served on Tony Hugli, 3550 General Atomics Court, 2-129, San Diego, CA 92121-1122.

Date: September 20, 2006

By: /s/ Jeffrey B. Bove  
Jeffrey B. Bove (#998)  
CONNOLLY BOVE LODGE & HUTZ LLP  
The Nemours Building  
1007 North Orange Street  
Wilmington, DE 19801  
Telephone: (302) 658-9141  
jbove@cblh.com

# **Exhibit 1**

Issued by the  
**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF DELAWARE**  
**SUBPOENA IN A CIVIL CASE**

**TALECRIS BIOTHERAPEUTICS, INC. and  
 BAYER HEALTHCARE LLC,**  
 Plaintiffs,

v.

CASE NUMBER: 05-349 GMS

**BAXTER INTERNATIONAL INC. and  
 BAXTER HEALTHCARE CORPORATION,**  
 Defendants.

TO: Tony Hugli, Ph.D.  
 Torrey Pines Institute for Molecular Studies  
 3550 General Atomics Court, 2-129  
 San Diego, CA 92121-1122

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

Mariott Hotel, 25135 Park Lantern, Dana Point, CA 92629

October 3, 2006 9:30am

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date and time specified below (list documents or objects):

See attached Schedule "A"

PLACE

DATE AND TIME

CONNOLLY BOVE LODGE & HUTZ LLP

September 26, 2006 9:30am

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

*Mary W. Bourke*

Attorney for Plaintiff

September 19, 2006

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Mary W. Bourke, Esquire  
 CONNOLLY BOVE LODGE & HUTZ LLP  
 1007 N. Orange Street, Wilmington, DE 19801

(302) 658-9141

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

**DECLARATION OF SERVER**

**I declare under penalty of perjury under the laws of the United States of American that the foregoing information contained in the Proof of Service is true and correct.**

Executed on \_\_\_\_\_  
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts

business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected material and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

**(B) If a subpoena**

(i) requires a disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

## **SCHEDULE A**

### **I - DEFINITIONS**

COMMUNICATION means any form of oral or written exchange, whether in PERSON, by telephone, by facsimile, by telex, by electronic mail ("e-mail") or by any other medium; also any DOCUMENT, whether or not such DOCUMENT or the information contained therein was transmitted by its author or to any PERSON.

DESCRIBE or DESCRIPTION when used with respect to any act, action, accounting, activity, audit, practice, process, occurrence, occasion, course of conduct, happening, negotiation, relationship, scheme, COMMUNICATION, conference, discussion, development, service, transaction, instance, incident or event means provide the following information: its general nature; the time and place thereof; a chronological account setting forth each element thereof, what such element consisted of and what transpired as a part thereof; the IDENTITY of each PERSON who performed any function or had any role in connection therewith (e.g., speaker, participant, contributor of information, witness, etc.) or who has any knowledge thereof together with a DESCRIPTION of each such PERSON'S function, role or knowledge; the IDENTITY of each DOCUMENT which refers thereto or which was used, referred to or prepared in the course or as a result thereof; and IDENTIFY each COMMUNICATION which was a part thereof or referred thereto. When used in connection with any calculation or computation, the terms DESCRIBE or DESCRIPTION mean provide the following information; an explanation of its meaning an explanation of the manner in which it was derived; the IDENTITY of each PERSON who performed any function with respect thereto and a DESCRIPTION of his function; the IDENTITY of each DOCUMENT which refers thereto or which was used, referred to or prepared in the course of as a result thereof; and, the IDENTITY of each COMMUNICATION which occurred in the course of the preparation thereof or which referred thereto.

DOCUMENT is used in the most comprehensive and inclusive sense permitted by Rule 34 of the Federal Rules of Civil Procedure and includes, but is not limited to, all forms of recorded information in YOUR actual or constructive possession, custody, or control whether handwritten, typed, printed, or recorded or stored on computer data storage devices, diskettes, videotapes, audio

tape, or photographic film. DOCUMENT includes any drafts or versions thereof, and all copies on which any mark, alteration, writing, attachment or any other change from the original appears. DOCUMENT includes, by way of example and not by way of limitation: (a) letters, correspondence, memoranda, e-mail (current, deleted, and archived) and other electronic COMMUNICATIONS, voice mail recordings, facsimile or telefax transmissions, telex, telegrams, and any other intra-company and inter-company COMMUNICATIONS; (b) minutes, transcripts, notes or records of meetings, conferences, telephone conversations, and interviews, including lists of PERSONS attending the meetings or conferences; (c) calendars, date books, logs, logbooks, diaries; (d) data, test results, laboratory notebooks, engineering or other notebooks, work papers, notes compilations, tabulations, software, source code, object code; (e) blue prints, drawings, sketches, schematics, specifications, diagrams, photographs, maps, charts, graphs; (f) user manuals, policy manuals, guidelines, handbooks, machinery, manuals, directions, instruction books; (g) sales and promotional literature, brochures, press releases, advertisements, pamphlets; (h) reports, studies, analyses, projections, strategic plans, presentations, books, booklets, texts; (i) forms, legal pleadings or filings, deposition transcripts; (j) ledgers, accounting records, sales and financial information; (k) archived records and expired files; and (l) any retrievable word processor files, e-mail, spreadsheet, presentation or other compilation of information stored on a personal computer, a server or any other storage media.

IDENTIFY, IDENTITY or IDENTIFICATION, when used in reference to a natural PERSON, means provide the following information: full name; present or last known business and residence addresses; present or last known business affiliation; and, present or last known business position, job title and a DESCRIPTION of job functions, duties and responsibilities, the IDENTITY of all supervisors; and the name and telephone number of all employees. When used with reference to any entity other than a natural PERSON, state: its full name; the address of its principal place of business; the jurisdiction under the laws of which it has been organized or incorporated and the date of such organization or incorporation; the IDENTITY of all individuals who acted and/or authorized another to act on its behalf in connection with the matters referred to; in the case of a corporation, the names of its directors and principal officers; and, in the case of an entity other than a corporation, the IDENTITIES of its partners or principals or all individuals who acted or who authorized another to act on its behalf in connection with the matters referred to. When used in



reference to a DOCUMENT, the terms IDENTIFY, IDENTITY or IDENTIFICATION means provide the following information: the nature of the DOCUMENT (e.g., letter, contract, memorandum) and any other information (i.e., its title, index or file number) which would facilitate in the IDENTIFICATION thereof; the date of preparation; its present location and the IDENTITY of its present custodian or, if its present location and custodian are not known, a DESCRIPTION of its last known disposition; its subject matter and substance or, in lieu thereof, annex a legible copy of the DOCUMENT to the answers to these interrogatories; the IDENTITY of each PERSON who performed any function or had any role in connection therewith (i.e. author, contributor of information, recipient, etc.) or who has any knowledge thereof, together with a DESCRIPTION of each such PERSON'S function, role or knowledge; and, if the DOCUMENT has been destroyed or otherwise is no longer in existence or cannot be found, the reason why such DOCUMENT no longer exists, the IDENTITY of the people responsible for the DOCUMENT no longer being in existence and of its last custodian. When used in connection with a meeting or a COMMUNICATION, the terms IDENTIFY, IDENTITY AND IDENTIFICATION mean provide the following information: its general nature; the time and place of its occurrence; its subject matter and substance; the IDENTITY of each PERSON who performed any function or had any role in connection therewith or who has any knowledge thereof, together with a DESCRIPTION of each such PERSON'S function, role, or knowledge; and, the IDENTITY of each DOCUMENT which refers thereto or which was used, referred to or prepared in the course or as a result thereof.

PERSON means individual or legal entity, including, but not limited to, companies, corporations, professional corporations, proprietorships, firms, partnerships, associations, joint ventures, trusts, estates, receivers, and institutions and government entities, including, but not limited to, federal, state and local governments and all subdivisions, departments, bodies, agencies, authorities, or corporations thereof.

RELATING or RELATING TO means constituting, containing, concerning, embodying, reflecting, describing, analyzing, IDENTIFYING, stating, referring to, dealing with, or in any way pertaining to.

YOU, YOUR and YOURS means all employees, agents, contractors, sub-contractors, officers, and directors of Prison Health Services and all PERSONS acting on behalf of Prison Health Services.

Miscellaneous: The singular includes the plural; the plural includes the singular; the masculine gender includes the feminine and neuter gender; the neuter gender includes the masculine and feminine genders. "And" means and/or. "Or" means and/or. Whenever any interrogatory calls for information with respect to "each" one of a particular type of matter, event, PERSON or entity of which there is more than one, separately list, set forth or IDENTIFY for each thereof all of the information called for.

## **II - INSTRUCTIONS**

In addition to the Federal Rules of Civil procedure and the applicable Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, please respond in accordance with the following instructions:

Claims of Privilege: If any DOCUMENT or thing responsive to any of the following requests is being withheld based on any claim of privilege, DESCRIBE generally the DOCUMENT or thing withheld, state the privilege being relied upon and IDENTIFY all PERSONS or entities who have or have had access to said DOCUMENT or thing.

Overly Burdensome: If any request is objected to on grounds that a response would be overly burdensome, YOU are instructed to DESCRIBE the number of responsive DOCUMENTS, IDENTIFY each DOCUMENT, specify the location of all responsive DOCUMENTS and provide an estimate of the costs associated with copying said responsive DOCUMENTS.

## **III - REQUESTS FOR DOCUMENTS AND THINGS**

REQUEST NO. 1: All documents relating to your work with Baxter on anti-compliment activity, compliment binding or compliment activation.



**CERTIFICATE OF SERVICE**

I, hereby certify on this 20<sup>th</sup> day of September, 2006 I electronically filed the foregoing Notice of Service with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
---	---

/s/ Jeffrey B. Bove

**Jeffrey B. Bove (#998)**

**Mary W. Bourke (#2356)**

**Mark E. Freeman (#4257)**

**Jaclyn M. Mason (#4737)**

**CONNOLLY BOVE LODGE & HUTZ LLP**

The Nemours Building

1007 North Orange Street

Wilmington, DE 19801

Telephone: (302) 658-9141

jbove@cblh.com

Bradford J. Badke  
Gabrielle Ciuffreda  
ROPES & GRAY LLP  
1251 Avenue of the Americas  
New York, NY 10020-1105  
(212) 596-9000  
*Attorneys for Bayer  
Healthcare LLC*

*Attorneys for Talecris Biotherapeutics, Inc.  
and Bayer Healthcare LLC*